***THE HONOURABLE SRI JUSTICE V.V.S.RAO**

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**+WRIT PETITION No.4366 of 2007**

% 30-04-2007

# D.Rajamani Reddy

...Petitioner

AND

$ The Government of Andhra Pradesh,
rep.by its Secretary,
Department of Panchayat Raj,
Secretariat, Hyderabad, and others.

...Respondents

! COUNSEL FOR PETITIONERS: M.Ravindranath Reddy.

^ COUNSEL FOR RESPONDENTS: G.P for Panchayat Raj and

Sri V.V.Prabhakar Rao

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>HEAD NOTE:

? CASES REFERRED:

1 2007(1) ALT 520
2 AIR 1961 AP 250
3 AIR 1952 SC 64
4 AIR 1967 SC 669
5 AIR 1995 SC 1512 = 1995 Supp(2) SCC 305
6 AIR 1985 SC 1233
7 AIR 1988 SC 66
8 (1996) 6 SCC 303
9 1998) 8 SCC 703
10 (2004) 7 SCC 492
11 (1978) 1 SCC 405
12 (1988) 1 SCC 277
13 (1988) 1 SCC 572

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.4366 of 2007

**30.4.2007**

Between:

D.Rajamani Reddy, S/o.Govindu Reddy
And others

… Petitioners

AND

The Secretary to the Government of Andhra Pradesh,
Panchayat Raj Department, Secretariat, Hyderabad
And others

… Respondents

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.4366 of 2007

ORDER:

This writ petition seeks writ of *quo warranto* against sixth respondent herein to disclose the authority under which he is holding office of Sarpanch of Thiruchanoor Gram Panchayat and for a further direction to vacate the office of the Sarpanch. As an alternative relief, petitioners seek an order from this Court to remove sixth respondent from the office of the Sarpanch.

The petitioners 1 to 4, 6, 7 and 9 statedly belong to Backward Classes (BCs). In the elections conducted for the office of the Sarpanch (reserved for BCs) of Thiruchanoor, under supervision of sixth respondent on 29.7.2006, the petitioners 7, 8, sixth respondent and three others contested election. The sixth respondent was declared elected. The sixth respondent claimed to be a candidate belonging to BC-A, i.e., 'Vannereddy', recognized as BC in the State of Andhra Pradesh. The petitioners allege that sixth respondent hails from Tamil Nadu and belongs to Naikkar caste, which is not one of the classes/castes recognized as BC in Andhra Pradesh. They therefore assert that sixth respondent does not belong to BC in Andhra Pradesh. The petitioners also referred to the evidence they procured in support of this contention. Be that as it is, seventh petitioner submitted a representation on 26.12.2006 to the second respondent requesting an enquiry against sixth respondent. The representation was allegedly forwarded to the Department of BC Welfare, who in turn by memo dated 06.1.2007 directed fourth respondent to take necessary action in the matter.

Learned Counsel for the petitioners placed strong reliance on the

judgment of this Court in **Dr.Ambedkar Seva Samajam, Bapatla v Government of A.P.**[1] in support of the contention that when sixth respondent got elected claiming himself to be a candidate belonging to BC based on a fraudulently obtained certificate, the availability of alternative remedy under Section 233 of Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity) is not a bar to seek judicial review. He nextly contends that sixth respondent usurped office of Sarpanch of Thiruchanoor by playing fraud on the Constitution and, therefore, as a constitutional Court, this Court can issue a writ of *quo warranto* without driving the aggrieved persons to alternative forum. Learned counsel relied on a Division Bench Judgment of this Court in **Venkataraya v Sivarama Prasad**[2] in support of the contention that when a disqualified person holds public office, it is open for any voter to ask for writ of quo warranto. In such circumstances, learned counsel would urge that whatever be delay, the Court is entitled to issue *Rule nisi* and forthwith prevent the usurper of public office from exercising public functions.

**Opposing** the writ petition, learned Assistant Government Pleader for Panchayat Raj submits that election was conducted on 29.07.2006. Petitioners did not avail effective alternative remedy under Section 233 of the Act as well as the A.P.Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995(hear after the Rules). He also submits that under Article 243-O of Constitution of India, jurisdiction of this Court is barred and the petitioners were required necessarily to approach the Election Tribunal for redressal. Having failed to do so, they cannot maintain the writ petition for quo warranto.

Writ of quo warranto is prerogative writ. It is in the nature of a right of the superior Court against a person who usurped public office. It enables the Court to enquire by what authority usurper supports his claim to the Office. While determining the right the Court will command him “to show by what right” (“quo warranto”) he holds office. It is also within the right of the Court whether or not to exercise discretion to ask such person to show justification for the claim. If a person seeks redressal for the grievance involving private rights, quo warranto would not lie. Further, as in the case of other prerogative writs, issue of quo warranto is subject to other limitations. Janes L.High in his ‘Treatise on Extraordinary Legal Remedies’[3] explains that quo warranto does not lie when other remedy exists.

Section 617 in the treatise reads as under.

> [d]617. A striking analogy exists between the remedy by quo warranto information, and the extraordinary remedies of injunction in equity and mandamus at law, in that **neither of**

> **these extraordinary remedies is grantable where the party aggrieved may obtain full and adequate relief if the usual course of proceedings at law, or by the ordinary forms of civil action. So an information will not lie against an officer of state militia, when a special tribunal is provided by the militia law of the state which is vested with exclusive jurisdiction of such matters.** Nor is the rule as here stated limited to cases where the relief may be obtained in the ordinary forms of common law actions, but it applies also to cases where the grievance may be redressed by bill in equity, and the existence of an adequate remedy in enquiry would seem to be a sufficient objection to entertaining proceedings by information.
>
> (emphasis supplied)

In the election matters, vis-à-vis the writ of quo warranto there is divergence of opinion in other jurisdictions.

> 617a. Some conflict of authority has existed as to the extent to which statutory remedies for contesting elections to public office impair or supersede the jurisdiction of the courts by proceedings in quo warranto to determine the title to such offices, in cases of dispute between rival claimants. In some of the states it has been held that when a specific remedy is provided by statute for contesting elections before a tribunal designated for that purpose, and a mode of procedure therein is prescribed by law, resort must be had to such statutory remedy, and that proceedings by information in the nature of a quo warranto will not be entertained. The better-considered doctrine, however, undoubtedly is, that the existence of the statutory remedy does not oust the jurisdiction of the courts by quo warranto, or prevent the people from resorting to this remedy to determine questions of usurpation of public offices. A proceeding in quo warranto is not an election contest between rival claimants of an office, but is rather a proceeding by the people in their sovereign capacity, the right to maintain which is not taken away or impaired by a statute granting to electors the right in their individual capacity to contest an election to a public office. An information will, therefore, lie in behalf of the people in such cases, notwithstanding the existence of a statutory remedy in behalf of citizens or electors desiring to contest an election to a public office.

The above principle in Indian context, is however, subject to statutory bar - express or implied – for exercising power to issue quo warranto in election matters. For instance Articles 243-O, 243ZG and 329 bar judicial review in election disputes.

The admitted facts are: sixth respondent contested the election claiming himself to be a person belonging to ‘Vanneredy’. In para 13 of the affidavit accompanying the writ petition, it is admitted that sixth respondent obtained a community certificate to that effect from the Mandal Revenue Officer. That was the basis, which enabled sixth

respondent to successfully contest the election as BC. The community certificate produced by the sixth respondent was presumably obtained in accordance with A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Certification Act, for brevity) and A.P.Scheduled Castes, Scheduled Tribes and Backward Classes – Issue of Community, Nativity and Date of Birch Certificates Rules, 1997 (Certification Rules, for brevity). Therefore, *prima facie,* the certificate produced by sixth respondent at the time of election was valid till it is cancelled in accordance with the Certification Act and Certification Rules. Indeed, Section 21 of the aforesaid Act and Rule 19 of the Certification Rules, provide that unless the certificate issued earlier is cancelled under the provisions of the said statute, it shall be deemed to be valid for all purposes.

The power to cancel any community certificate under Section 5 of Certification Act vests in the District Collector, who after getting enquiry conducted by District level scrutiny committee is empowered to cancel the certificate. Therefore, in a writ petition validity of certificate cannot be gone into. Be it also noted that under Section 2(2) of the Act, "backward classes" means any socially and educationally Backward Classes of citizens recognized by the Government for purpose of clause (4) of Article 15 of the Constitution of India, and only such backward classes are entitled for reservation of office of Sarpanch as provided under Section 15(2) of the Act.

Consequent to Constitution (seventy-third Amendment) Act, 1992 introducing part IX in the Constitution, all the State Legislatures were required under Article 243N to enact law relating to Panchayats consistent with the provisions of Part IX of the Constitution. A.P.Legislature enacted Panchayat Raj Act, 1994, which came into force with effect from 30.05.1994. At that point of time, Certification Act was not brought into force though it was enacted in 1992. The Certification Act came into force with effect from 16.05.1997. As noticed in the previous paragraphs, the Certification Act had an impact on the doubtful validity of a community certificate produced by a candidate for Panchayat election. Realising this, A.P.State Legislature enacted A.P.Panchayat Raj (Amendment) Act, 2001 (A.P.Act No.37 of 2001) with effect from 23.08.2001 introducing clause (aa) in Section 20 of the Act, which deals with disqualification of members. It provides that subject to provisions of Section 22 of the Act, a member shall cease to hold office as such if he is or becomes subject to any of the disqualifications specified in Section 19 of the Act. Then comes Section 20 (aa), which is inserted by A.P.Act No.37 of 2001. The same reads as under.

**20. Disqualification of members:-** Subject to the provisions of

Section 22, a member shall cease to hold office as such if he-

(a) is or becomes subject to any of the disqualifications specified in Section 19;

(aa) is elected as a member to a Ward/Office reserved for Scheduled Castes or Scheduled Tribes or Backward Classes on the basis of a community certificate and subsequently the said community certificate is cancelled under Section 5 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes). Regulation of issue of Community Certificates Act, 1993.

Therefore, as long as certificate issued under the Certification Act or recognized to be valid under the said Act, by reason of Section 20(aa) of the Act, a member cannot be held disqualified unless such certificate is cancelled under Section 5 of the Certification Act.

In view of the legal position as above, can it be said that sixth respondent is usurper of the office of Sarpanch? When *prima facie* the basis of qualification has a statutory support, usurpation of public office cannot be presumed. That is what was precisely laid down in **Venkataraya** (supra), in which Division Bench observed.

> This leads us to the question whether the jurisdiction of this Court should be exercised in a case like this. As pointed out by Tindal C.J., in deciding whether the information should be refused or whether the rule should be granted, the test is whether there has been usurpation of an office; in other words whether there is a legal disability to hold the office by or a legal prohibition against a person occupying a particular place. It is not argued before us that the persons elected as Chairman and Vice-chairman were in any way disqualified to be elected as Chairman and Vice-chairman. But all that is urged is that the elections instead of being held after 1st December 1959 took place a day prior to the prosper constitution of the Parishad. Could it be posited that this amounted to usurpation of the place by the Chairman and Vice-chairman? In our opinion, the answer is in the negative. It is admitted that all the formalities were observed before the election took place and no defect other than the one pointed out has vitiated the conduct of the elections. In the circumstances, we find it difficult to characterize the holding of the offices by the two respondents as usurpation.

Article 243-O of Constitution of India specifically bars the jurisdiction of the Courts in election disputes. Commencing with non-abstante clause, it provides that the validity of an election to Gram Panchayat shall be called in question only by an election petition. Section 233 of the Act is an enacted provision to give effect to Article 243-O of Constitution of India and provides that no election held under the Act shall be called in question except by an election petition presented to such authority and in accordance with such Rules. This

Article is *in pari materia* with Article 329 of Constitution of India, which deals with elections to the House of Representatives or House of Legislators. Article 329 of Constitution of India was subject matter of interpretation in a number of decisions before the Supreme Court. All the decisions consistently lay down that when once the notification is issued or after declaration of results, the Courts exercising power of judicial review cannot interdict or interfere in such election matters and that the election can only be challenged by the aggrieved by way of election petition presented before duly constituting Tribunal (See **N.Ponnuswami v Returning Officer**[4], **Meghraj v Delimitation Commission**[5], **State of U.P. v Pradhan Sangh Kshetra Samiti**[6], **Lakshmi Charan Sen v A.K.M.Hassan Uzzaman**[7], **Gujarat University v N.U.Rajguru**[8], **Anugrah Narain Singh v State of U.P**[9] and **C.Subrahmanyam v K.Ramanjaneyulu**[10]). The Principle is well settled and axiomatic and does not require further elaboration.

The law prescribes qualifications and disqualifications for election to an office: A person who possess these qualifications, should not possess disqualifications not only at the time of elections but should continue to have the same qualifications and continue without any disqualifications. In a given case, where an elected candidate incurs disqualification, the law prohibits such elected person to continue in public office. In such a case, possibly one can argue that by reason of such disqualification, the person usurped public office and therefore, notice may be issued to show why information in the nature of quo warranto should not be exhibited. These cases are different. In this case, petitioners 7, 8 and sixth respondent contested the election. They filed their nominations, which was scrutinized and found to be proper by the competent election authority. At that stage, petitioners 7 and 8 did not raise objection. It is only after the election is over and sixth respondent was inducted into office, petitioners raised dispute about communal status of sixth respondent. Admittedly, they were aware of the situation by September, 2006. When the election was announced on 29.07.2006, election petition challenging the election of the sixth respondent ought to have been filed within thirty days as per Rule 3 of the Rules. They did not do so. They allege that they came to know about the disqualification of the sixth respondent in September, 2006. Even thereafter they did not approach any authority. For instance, they could have moved the District Panchayat Officer through the Executive Officer of the Panchayat under Section 22 of the Act bringing this information to the notice of the said authority, in which event, there was a possibility of going before the District

Judge for a decision as to whether the sixth respondent incurred disqualification by reason of not belonging to backward class in Andhra Pradesh. They did not do so. They allowed the time to lapse. Ultimately, they filed the instant writ petition on 02.03.2007. This is certainly a relevant factor, which must not be forgotten while considering issue of quo warranto especially when the sixth respondent produced certificate issued by the competent authority in support of his claim that he belongs to BC.

As already noticed, Section 233 of the Act contemplates an election petition before the Tribunal to challenge the election. The Rules made under Section 233 read with Section 261(1) of the Act are comprehensive enough which take in its hold all types of challenges to be adjudicated before the Election Tribunal. Rule 12 of the Rules is relevant and reads as under.

> 12. If in the opinion to the Election Tribunal,
> (a) That on the date of his election, a Returned Candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Act, or
> (b) That any corrupt practice as laid down under Section 211 of the Act has been committed by a Returned Candidate or his election agent or by any other person with consent of the Returned Candidate or his election agent, or
> (c) That any nomination has been improperly rejected, or
> (d) That the result of the election, insofar as it concerns a Returned Candidate has been materially affected.
>
> (i) by the improper acceptance of any nomination, or
>
> (ii) by any corrupt practice, committed in the interest of the Returned Candidate by an Agent other than his election agent, with the connivance of the Returned Candidate, or
>
> (iii) by the improper reception, refusal or rejection of any vote, or the reception of any vote which is void,
>
> (iv) by any non compliance with the provisions of the Act, or any Rules or Orders made under the Act
>
> (A) the Election Tribunal shall declare the election of the Returned Candidate to be void.
>
> (B) If the Election Tribunal holds the Returned Candidate guilty under clause (b) and clause (d)(ii) of this Rule, the Election Tribunal shall in addition to declare the election of the Returned Candidate as void, shall also declare that the returned candidates shall be disqualified to contest in any elections under this Act, for a period of six years from the date of the order.

Clause (a) of Rule 12 of the Rules enables the Election Tribunal to declare the election of the returned candidate to be void on the ground that on the date of his election, such candidate was not qualified or disqualified to be chosen to fill the seat under the Act. The complaint of the petitioners is that the sixth respondent is disqualified as he belongs to the caste of Naikker, which is not recognized as Backward Class in the State of Andhra Pradesh. It is certainly a matter for election petition. Such being the legal position, the petitioners who failed to file election petition within thirty (30) days as per Rule 3(1) of the Rules, chose public law remedy seeking writ of quo warranto. The issue of any prerogative writ including a writ of quo warranto is also subject to different limitations including the one pointed out hereinabove. Therefore, the writ petition cannot be accepted.

The above conclusion is also supported by the decision of the Supreme Court in **Manda Jaganath v K.S.Rathnam**[11]. In the said case, the elections of Parliament held in April, 2004. Rathnam filed nomination claiming as a candidate of Telangana Rashtra Samithi (TRS). At the time of scrutiny, objection was raised that Form-B is not proper. Returning Officer rejected Form-B and did not allot Rathnam the symbol reserved for TRS. He then filed a writ petition before this Court being W.P.No.6653 of 2004, i.e., **K.S.Rathnam v Returning Officer**. He sought a writ of Mandamus to Returning Officer to treat him as a candidate of TRS and allot the reserved symbol. This Court while issuing notice of Admission set aside the decision of the Returning Officer observing that allotment of symbol by the Returning Officer at the time of scrutiny is not one of the grounds, on which the election petition can be filed under the provisions of Representation of Peoples Act, 1957. This order was assailed before the Supreme Court after obtaining Special Leave. It was *inter alia* contended that in view of the bar in Article 329-B of the Constitution of India, the High Court was not justified in entertaining the writ petition and directing the Returning Officer to allot the reserved symbol of TRS to Ratham. The Supreme Court considered the issue whether Returning Officer is justified in rejecting Form B submitted by Rathnam and whether it is not a matter for the High Court to decide in exercise of writ jurisdiction. The Supreme Court referred to **N.P.Ponnuswami** (supra), **Mohinder Singh Gill v Chief Election Commissioner**[12], **Election Commission of India v Shivaji**[13] and **S.T.Muthusami v K.Natarajan**[14] and observed that the irregularities flowing from the statutes, rules and orders can be addressed only in properly instituted election petition and cannot be a ground to entertain in a writ petition.

The Supreme Court therefore set aside the order of the High Court and upheld the decision of Returning Officer.

Under the Act, if an elected member of Panchayat does not possess qualification or becomes ineligible by reason of acquiring disqualifications under Sections 17 to 20 of the Act, a complaint can be filed before the District Court for a decision in accordance with Section 22 of the Act. This remedy is in addition to the remedy under Section 233 of the Act. In **M.Jagannadha Rao v Government of A.P.,** [15] this Court laid down as under.

> On a careful scrutiny of Section 22 and 233 of the Act, this Court is of the considered opinion that these provisions virtually operate in different fields and the scope and ambit also appear to be different. It cannot be said that the remedy by way of Election Petition always can be equated with the remedy under Section 22 of the Act. It is needless to say that the grounds which were raised and to be adjudicated on judicial side in Election Petition may be different grounds and the grounds which may be available in relation to disqualifications to be adjudged under Section 22 of the Act may be of limited nature which may have to be decided by the concerned authorities in accordance with the procedure under Section 22 of the Act. Be that as it may, the remedies available in relation to disqualification under Section 22 of the Act by authorities and by way of Election Petition under Section 233 of the Act, these are simultaneous remedies and merely because a party invokes the jurisdiction of Election Tribunal by filing Election Petition, unless there is specific prohibition, it cannot be said that such party cannot pursue the remedy under Section 22 of the Act. If such interpretation to be adopted it would amount to doing violence to the spirit of the legislation in introducing such remedies by indicating separate specific provisions viz., Section 22 of the Act and Section 233 of the Act. Hence, these two provisions and the exercise of powers in relation to the respective aspects, operate definitely in different fields at least upto some extent and may be that certain grounds may be overlapping.

The decisions relied on by the learned counsel for petitioners did not lay down any inflexible rule that in every election matter, quo warranto should be issued on mere suspicion. It may be mentioned that these two decisions relied on by the learned counsel do not make a reference to Section 20(aa) of Act. In the facts and circumstances of this case, discretion under Article 226 of Constitution of India should not be exercised in favour of petitioners, especially when there is rebuttable presumption regarding the status of sixth respondent by virtue of certificate issued by the Mandal Revenue Officer.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

(**V.V.S.RAO, J**)

30.04.2007.
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Note: LR copy be marked.
(By order)
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[1] 2007(1) ALT 520

[2] AIR 1961 AP 250

[3] Janes L.High 'A Treatise on Extraordinary Legal Remedies'; 3rd edn.1896; pp 705-706

[4] AIR 1952 SC 64

[5] AIR 1967 SC 669

[6] AIR 1995 SC 1512 = 1995 Supp(2) SCC 305

[7] AIR 1985 SC 1233

[8] AIR 1988 SC 66

[9] (1996) 6 SCC 303

[10] (1998) 8 SCC 703

[11] (2004) 7 SCC 492

[12] (1978) 1 SCC 405

[13] (1988) 1 SCC 277

[14] (1988) 1 SCC 572

[15] 2007 (1) ALD 779